

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

WP(C).No. 9881 of 2007(B)

PETITIONER:

JAYAKUMAR, ATTENDER, MURUNTHAL
SERVICE CO-OP.BANK LTD.NO.1814, ANCHALUMMOOD,
PERINAD P.O., KOLLAM.

BY ADV. SRI.P.N.MOHANAN

RESPONDENTS:

1. ASST.REGISTRAR OF CO-OP.SOCIETIES
(GENERAL), KOLLAM.
2. THE ASST.REGISTRAR OF CO-OP.SOCIETIES
(AUDIT), KOLLAM, EX-OFFICIO SECRETARY,
CIRCLE CO-OP.UNION, KOLLAM.
3. MURUNTHAL SERVICE CO-OP.BANK LTD.NO.
1814, ANCHALUMMOOD, PERINAD P.O.,
KOLLAM, REP. BY ITS PRESIDENT.

ADDL. 4. JOSH Y XAVIOR, S/O.XAVIER, AGED 32 YEARS,
PEON MURUNTHAL SERVICE CORPORATIVE
BANK LIMITED, NO.1814, PUTHU VEEDU,
MATHILIL.P.O., PERUNADU, KOLLAM.

(ADDL. 4TH RESPONDENT IMPEADED AS PER ORDER IN I.A. NO.4731/2007
DATED 29.3.2007)

BY ADV. SRI.R.SREEHARI
SRI.P.V.MOHANAN
GOVT. PLEADER, SRI.P.K.RAVIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 29/03/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

- EXT.P1: COPY OF THE PROSPECTUS ISSUED BY THE STATE CO-OP. UNION DURING JUNE 2007.
- EXT.P2: COPY OF THE RESOLUTION DATED 19.3.2007 FOR THE MANAGING COMMITTEE.
- EXT.P3: COPY OF THE APPLICATION FOR THE JDC COURSE SUBMITTED BY THE PETITIONER DATED 20.3.2007.
- EXT.P4: COPY OF THE ORDER OF THE JOINT REGISTRAR DATED 4.12.2006.
- EXT. P5: COPY OF THE ORDER DATED 18.6.03.
- EXT. P6: COPY OF THE ORDER DATED 4.7.05 ISSUED BY 1ST RESPONDENT.
- EXT. P7: COPY OF THE RESOLUTION DATED 26.6.04 OF THE MANAGING COMMITTEE.
- EXT.P8: COPY OF THE SENIORITY LIST PUBLISHED BY MURUNTHAL SERVICE CO-OP. BANK.
- EXT. P9: COPY OF THE FEEDER CATEGORY SUB RULES.

RESPONDENTS EXHIBITS:

- EXT.R(1)A: COPY OF PROCEEDINGS OF JR, KOLLAM AS NO.CRP(2)229/06
- EXT.R(1)B: COPY OF THE COMPLAINT SUBMITTED BY SRI.JOSHY XAVIOR.
- EXT.R(4)A: COPY OF A PPLICATION D ATEE 9.3.2007.
- EXT.R(4)B: COPY OF PETITION DATED 20.3.2007.

/TRUE COPY/

P.A. TO JUDGE

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S. SIRI JAGAN, J.

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W.P(C) No. 9881 of 2007

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Dated this, the 29th March, 2007.

J U D G M E N T

The petitioner and additional 4th respondent are employees of the 3rd respondent- Bank. Both of them applied to the Bank for sending them to undergo the course of Junior Diploma in Co-operation (in short 'J.D.C.') which is of ten months' duration without benefit of salary for the period of course. By Ext.P2 resolution, the bank decided to send the petitioner for the course. Although, in Ext.P2 resolution, the application by the 4th respondent was also mentioned, the bank did not take any decision either way in respect of his application. Accordingly, the bank counter signed Ext.P3 application filed by the petitioner. The same was forwarded to the first and second respondents for certificates to be signed in the form itself as certificate Nos.II and III. However, the respondents 1 and 2 refused to issue certificates as requested by the petitioner. It is, under the above circumstances, the petitioner has approached this Court

seeking the following reliefs:-

“ i) issue a writ of mandamus or other appropriate writ, order or direction, directing the respondents 1 and 2 to issue certificates 2 and 3 in Ext.P3 application form forthwith if the particular furnished by the petitioner is correct.

ii) grant such other relief as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2. The learned Government Pleader, on the strength of the counter affidavit stated to have been filed by him, which does not find a place in the case records, but a copy of which has been made available across the bar, submits that the petitioner is not a regular employee of the 3rd respondent-bank and therefore he is not entitled to be sent for JDC course. The reason is that the bank appointed the petitioner as an Attender by category change from that of Salesman, to which he was appointed and that appointment alone was approved. The category change granted by the 3rd respondent- Bank was refused to be approved by the Joint Registrar. In the above

circumstances, the petitioner has filed W.P.(C) No.27916 of 2006 in which there is an order of stay. The reasoning of the Govt. Pleader is that now petitioner is appointed as an Attender for which there is no approval. Therefore, the petitioner cannot be considered as a regular employee of the bank is the submission made by the Government Pleader.

3. The additional 4th respondent has also filed a counter affidavit and strongly opposes the claim of the petitioner. He submits that it was pursuant to a complaint filed by him that respondents 1 and 2 have refused to issue the required certificates to the petitioner. He would submit that he had also applied for sending him for the course which is evident from Ext.P2 resolution and as such there was no reason for refusing permission to him for going for the course. He, therefore, submits that without sending him also for the course the petitioner shall not be allowed to attend the course.

4. I have heard the learned counsel on both sides in detail.

5. Along with the reply affidavit, the petitioner has produced Ext.P5 order by which the petitioner was appointed as Salesman in the society. That appointment was approved by the Joint Registrar, by Ext.P6 order, by which order itself the appointment of the additional 4th respondent has also been approved. By Ext.P7 order, the third respondent declared probation of the petitioner as well as the additional 4th respondent in the posts of Salesman and Peon, respectively. Ext.P8 is the seniority list of employees of the 3rd respondent society in which the petitioner appears at serial number 9 and the 4th respondent at serial number 10. Exts. P5 and P8 are not disputed by anybody before me. In fact in Ext.P8, the additional 4th respondent has also signed accepting the seniority position in the list. Now with regard to the dispute as to whether the petitioner is entitled to category change or not as an Attender is pending consideration before this Court in another Writ Petition. Even assuming that the category change cannot be approved, the only consequence would be that the

petitioner would have to go back to the post of salesman. Of course, the additional 4th respondent would contend that the post of salesman is no longer available in the bank on account of change of category of bank in support of which there is no material before me. I am also not inclined to consider the same in this Writ Petition since nobody has a case that Ext.P6 has been cancelled or that the petitioner's appointment to the post as Salesman has been cancelled. Therefore it cannot be disputed that either as Salesman or as Attender, the petitioner is a regular employee of the 3rd respondent-bank. As such he cannot be denied an opportunity to attend the JDC course on the ground now mentioned in the counter affidavit of respondents 1 and 2. Whatever that be, for the purpose of sending of JDC course it is totally irrelevant whether the petitioner is a salesman or attender.

6. The additional 4th respondent would contend that when both himself and petitioner had applied, it was not just to allow the petitioner alone to attend the course. I am of the opinion that this is a matter which

the additional 4th respondent would have taken up with the bank and the Joint Registrar in appropriate proceedings. For that reason, I do not think that the respondents 1 and 2 can refuse to give certificates for which the petitioner has applied for and the 3rd respondent bank has recommended. Accordingly, I direct respondents 1 and 2 to issue necessary certificates namely, Certificate Nos.2 and 3 in Ext.P3. This shall be done immediately on production of a certified copy of this judgment so that the petitioner can apply for the post tomorrow itself, which is stated to be the last date for such application.

The Writ Petition is allowed.

Issue certified copy of this Judgment today itself.

Sd/-
S. Siri Jagan, Judge

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///TRUE COPY///

P.A. TO JUDGE.